

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ALLAN L.M. ROBINSON,

Plaintiff,

v.

MICHAEL SCOTT TURNER, ANDREW  
MONSON, HESTER GILLELAND,  
KAREN JOHNSON, CHUCK SPOOR,  
CITY OF RAYMOND, HARLEY  
BOGGS, MICAH RISTOW, WILLIAM  
PENoyer, VANCE JOHNSON, and  
ELIZABETH PENoyer,

Defendants.

CASE NO. C14-5274 RJB

ORDER ON DEFENDANTS' FRCP  
12(B)(6) MOTION TO DISMISS  
PLAINTIFF'S COMPLAINT

This matter comes before the court on Defendants' FRCP 12(b)(6) Motion to Dismiss Plaintiff's Complaint. Dkt. 27. The court has reviewed the relevant documents and the remainder of the file herein.

PROCEDURAL HISTORY

Plaintiff filed his first Complaint (Dkt. 24) in this action in Grays Harbor County Superior Court on July 29, 2013. Among other things, plaintiff alleged violation of his "civil

1 rights as enumerated under both the state and federal constitutions . . . .” Dkt. 24 at 3–4. On  
2 January 10, 2014, plaintiff filed his First Amended Complaint (Dkt. 1-2), alleging “violation of  
3 42 U.S.C. § 1985” (underline in original), deprivation of plaintiff’s “civil rights as defined under  
4 42 U.S.C. 1983,” as well as other claims. Dkt. 1-2 at 2–3.

5 On April 3, 2014, defendants removed the case to this court, on the basis of federal  
6 question jurisdiction. Dkt. 1.

7 On April 17, 2014, plaintiff filed a Second Amended Complaint, stating:

8 This is a civil action in excess of the jurisdictional amount of this Court. Plaintiff  
9 asserts 42 U.S.C. § 1983 claims against defendants for multiple violations of his  
10 various constitutional rights. State law claims against defendants are so related to  
11 federal claims that they form the same case and controversy.

11 Dkt. 8 at 2.

12 On November 13, 2014, the court issued an order, directing plaintiff to “file one final  
13 new complaint that sets forth all the causes of action and facts plaintiff is alleging and all the  
14 defendants plaintiff is making claims against.” (Dkt. 25, at 5). The court further directed as  
15 follows:

16 In Plaintiff’s new complaint, Plaintiff should set out the specific actions taken by each  
17 defendant who Plaintiff believes violated his federal constitutional rights or state law, as  
18 well as the dates those actions occurred. Although specificity is required, Plaintiff’s  
19 complaint should only be a “short and plain statement of the claim showing that the  
20 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2).

19 Dkt. 25, at 5.

20 On December 1, 2014, plaintiff filed the complaint in response to the court’s November  
21 13, 2014 order: Complaint with Jury Demand and Declaratory Judgment. Dkt. 24. This  
22 complaint supersedes the previously filed complaints. An amended pleading supersedes the  
23 original pleading. *Hal Roach Studios v. Richard Feiner & Co.*, 896 F.2d 1542, 1546 (9th  
24

1 Cir.1990) ( “[t]he fact that a party was named in the original complaint is irrelevant; an amended  
 2 pleading supersedes the original” ); *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.1967); *London v.*  
 3 *Coopers & Lybrand*, 644 F.2d 811 (9th Cir.1981) (claims not realleged in amended complaint  
 4 are deemed waived); 6 Charles A. Wright, Arthur R. Miller & Mary K. Kane, Federal Practice  
 5 and Procedure § 1476, at 556-59 (1990). After amendment the original pleading no longer  
 6 performs any function and is “treated thereafter as non-existent,” *Loux*, 375 F.2d at 57.

### 7 COMPLAINT

8 The final complaint (Dkt. 24) names the following defendants: Michael Scott Turner  
 9 (former city attorney for the City of Raymond and current municipal court judge); Andrew  
 10 Monson (performs pro tempore duties for the City of Raymond); Hester Gilleland (clerk for the  
 11 City of Raymond); Karen Johnson (court clerk and city clerk for the City of Raymond); Chuck  
 12 Spoor (police chief of the City of Raymond); City of Raymond; Harley Boggs and Micah Ristow  
 13 (City of Raymond police officers); William Penoyer (city attorney for the City of Raymond);  
 14 Vance Johnson (former deputy with the Pacific County Sheriff’s Department); and Elizabeth  
 15 Penoyer (in her official capacity). Dkt. 26, at 1-2.

16 When a plaintiff proceeds *pro se*, the district court is required to afford plaintiff the  
 17 benefit of any doubt in ascertaining what claims plaintiff raised in the complaint and argued to  
 18 the district court. *Alvarez v. Hill*, 518 F.3d 1152, 1158 (9<sup>th</sup> Cir. 2008), citing *Morrison v. Hall*,  
 19 261 F.3d 896, 899 n.2 (9<sup>th</sup> Cir. 2001); see also *Karim-Panahi v. Los Angeles Police Dept.*, 839  
 20 F.2d 621, 623 (9<sup>th</sup> Cir. 1988)(pleadings of *pro se* civil rights plaintiff to be construed liberally,  
 21 affording plaintiff benefit of any doubt). The court has attempted to ascertain the claims and  
 22 facts as asserted in the complaint.

23 The complaint alleges the following facts:  
 24

1       **1. 2001 Citation.** On December 10, 2010, deputy Ristow contacted plaintiff at his  
 2 residence and informed him that his vehicle was running, and that, on December 13, 2010,  
 3 deputy Ristow filed a citation for “engine running and left unattended.” Dkt. 26, at 3. On  
 4 December 26, 2010, plaintiff requested discovery pursuant to a criminal rule, but Mr. Turner  
 5 denied the request. On February 23, 2012, Mr. Turner presented a Motion and Order to Dismiss  
 6 the citation to the City of Raymond Municipal court; Judge Monson signed the order at his  
 7 residence and drove the documents to Mr. Turner’s home. Plaintiff alleges that Mr. Turner and  
 8 Judge Monson “conspired to violate and deprive [plaintiff] of certain civil rights.” Dkt. 26, at 4.

9       **2. Reasonable Accommodation.** On January 16, 2011, plaintiff made a reasonable  
 10 accommodation request to Ms. Gilliland so that he could attend trial court proceedings. On  
 11 January 21, 2011, Ms. Gilliland denied the request. On November 16, after he had made requests  
 12 under the Americans with Disabilities Act, plaintiff appeared at the Raymond Municipal Court  
 13 on November 28, 2012. Mr. Turner and Ms. or Mr. Penoyer conspired to deprive plaintiff of  
 14 reasonable accommodation under the Americans with Disabilities Act.

15       **3. Public Records Requests.** After the citation was dismissed, plaintiff filed several  
 16 public records requests under Washington’s Public Records Act, RCW 42.56; Ms. Gilliland  
 17 denied these requests. Since February 26, 2013, Ms. Gilliland has engaged in a pattern of  
 18 conduct to deprive plaintiff of information he requested under RCW 42.56.

19       **4. Judicial Conduct Complaint.** On February 27, 2013, plaintiff filed a complaint  
 20 against Mr. Turner.

21       **5. August 28, 2013 Proceedings in Raymond Municipal Court.** Plaintiff had dental  
 22 surgery at 8:30 a.m., and appeared at the Raymond Municipal Court for a 1:30 p.m. hearing. The  
 23 courtroom was crowded, and only one seat was available. That seat was next to police officer  
 24

1 Boggs. Mr. Turner arrived 72 minutes late. Plaintiff informed William Penoyer, who was  
2 presiding as the judge, that he needed to take medication at a motel, but Judge Penoyer refused to  
3 talk to him. Judge Penoyer signed a bench warrant for plaintiff's arrest. Since September 12,  
4 2013, plaintiff has attempted to resolve the warrant but Mr. Turner and court clerk Vance  
5 Johnson have refused to accept his mail.

6 **6. Election.** Between March 6, 2012 and July 29, 2013, Ms. Gilleland, Mr. Turner, Mr.  
7 Spoor and Ms. Johnson have conspired to deprive plaintiff of "certain civil rights" in order to  
8 prevent him from being placed on the ballot for mayoral election. On June 28, 2013, deputy  
9 Vance confiscated plaintiff's cell phone as he was campaigning for mayor of the City of  
10 Raymond.

11 **7. Conversation at Hospital.** On June 28, 2013, officer Boggs and deputy Johnson  
12 listened to a telephone conversation between Dr. Shaw and VA physician Wallace in the  
13 emergency room of Willapa Hospital, and unlawfully passed the information on to police chief  
14 Spoor and Mr. Turner.

#### 15 MOTION TO DISMISS

16 On April 17, 2015, defendants filed a motion to dismiss, arguing that plaintiff (1) fails to  
17 set forth sufficient factual allegations against defendants that show how he was deprived of any  
18 right secured to him by the Constitution or laws of the United States; (2) fails to support a claim  
19 for malicious prosecution under 42 U.S.C. § 1983 because he has not shown how he was  
20 prosecuted without probable cause or how defendants' actions were done for the purpose of  
21 denying him a constitutional right, and because Mr. Turner is protected by absolute judicial  
22 immunity; (3) fails to set forth any facts to support a civil conspiracy claim; (4) fails to allege  
23 any facts showing that he is a qualified individual with a disability, that he was excluded from  
24

1 participation in or denied benefits of a public entity, and/or that any exclusion or discrimination  
2 was by reason of his disability, as are required to state a claim under the ADA. Dkt. 27.  
3 Defendants contend that plaintiff has not set forth facts sufficient to create a cause of action  
4 under state law, but that, if any state law claims survive, the court should decline supplemental  
5 jurisdiction over those claims. *Id.*, at 7.

6 On April 21, 2015, the court issued a notice, informing plaintiff of the requirements to  
7 respond to the motion to dismiss, and that he could file a response no later than May 18, 2015.  
8 Dkt. 28, at 2. In that notice, the court informed plaintiff that, if the motion to dismiss is granted,  
9 that would end his case. Dkt. 28, at 2. As of the date of this order, plaintiff did not file a  
10 response to the motion to dismiss.

#### 11 LEGAL STANDARD

12 Federal Rule of Civil Procedure 8(a)(2) provides that a pleading must contain a “short  
13 and plain statement of the claim showing that the pleader is entitled to relief.” Under Fed. R.  
14 Civ. P. 12 (b)(6), a complaint may be dismissed for “failure to state a claim upon which relief  
15 can be granted.” Dismissal of a complaint may be based on either the lack of a cognizable legal  
16 theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v.*  
17 *Pacifica Police Department*, 901 F.2d 696, 699 (9th Cir. 1990). While a complaint attacked by a  
18 Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation  
19 to provide the grounds of his entitlement to relief requires more than labels and conclusions, and  
20 a formulaic recitation of the elements of a cause of action will not do. *Bell Atlantic Corp. v.*  
21 *Twombly*, 550 U.S. 544, 555 (2007) (*internal citations omitted*).

22 Accordingly, “[t]o survive a motion to dismiss, a complaint must contain sufficient  
23 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft*

1 *v. Iqbal*, 129 S.Ct. 1337, 1349 (2009)(citing *Twombly*, at 570). A claim has “facial plausibility”  
 2 when the party seeking relief “pleads factual content that allows the court to draw the reasonable  
 3 inference that the defendant is liable for the misconduct alleged.” *Id.* First, “a court considering  
 4 a motion to dismiss can choose to begin by identifying pleadings that, because they are no more  
 5 than conclusions, are not entitled to the assumption of truth.” *Id.*, at 1350. Secondly, “[w]hen  
 6 there are well-pleaded factual allegations, a court should assume their veracity and then  
 7 determine whether they plausibly give rise to an entitlement to relief.” *Id.* “In sum, for a  
 8 complaint to survive a motion to dismiss the non-conclusory factual content, and reasonable  
 9 inferences from that content must be plausibly suggestive of a claim entitling the pleader to  
 10 relief.” *Moss v. U.S. Secret Service*, 2009 WL 2052985 (9th Cir. July 16, 2009).

11 If a claim is based on a proper legal theory but fails to allege sufficient facts, the plaintiff  
 12 should be afforded the opportunity to amend the complaint before dismissal. *Keniston v.*  
 13 *Roberts*, 717 F.2d 1295, 1300 (9th Cir. 1983). If the claim is not based on a proper legal theory,  
 14 the claim should be dismissed. *Id.* “Dismissal without leave to amend is improper unless it is  
 15 clear, upon de novo review, that the complaint could not be saved by any amendment.” *Moss v.*  
 16 *U.S. Secret Service*, 2009 WL 2052985 (9th Cir. 2009). Plaintiff was provided with the  
 17 opportunity to amend. *See* Procedural History, *supra*.

## 18 DISCUSSION

### 19 **A. Claims under 42 U.S.C. § 1983**

20 To state a claim for relief under 42 U.S.C. § 1983, plaintiff must establish that: (1) plaintiff  
 21 was deprived of a right secured by the Constitution or laws of the United States, and (2) the  
 22 deprivation was visited upon plaintiff by a person acting under the color of state law. *Gomez v.*  
 23 *Toledo*, 446 U.S. 635, 640 100 S. Ct. 1220 (1980). “A person subjects another to the deprivation of a  
 24 constitutional right, within the meaning of § 1983, if he does an affirmative act, participates in

1 another's affirmative acts or omits to perform an act which he is legally required to do that causes the  
 2 deprivation of which complaint is made." *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).  
 3 Recovery under 42 U.S.C. § 1983 requires an actual connection or link between the actions of the  
 4 defendant and the deprivation alleged to have been suffered by the plaintiff. *Monell v. Dep't of Soc.*  
 5 *Serv.*, 436 U.S. 658, 98 S. Ct. 2018 (1978).

6 *I. 2010 Citation.* Plaintiff apparently alleges that the citation issued on December 10,  
 7 2010, for engine running and left unattended, denial of his request for discovery, presentment of  
 8 the motion to dismiss the citation by Mr. Turner to Mr. Monson at Mr. Monson's home, and  
 9 dismissal of the citation during a court session held on Saturday violated his constitutional rights.

10 A plaintiff may bring a claim for malicious prosecution under 42 U.S.C. § 1983 if  
 11 plaintiff can show that a person, entity, or municipality acting under the color of state law  
 12 violated his "right, privilege, or immunities secured by the constitution and [federal] laws."  
 13 *Awabdy v. City of Adelanto*, 368 F.3d 1062, 1066 (9th Cir. 2004) (citation omitted). To  
 14 demonstrate malicious prosecution under § 1983, a plaintiff "must show that the defendants  
 15 prosecuted [him] with malice and without probable cause, and that they did so for the purpose of  
 16 denying [him] equal protection or another specific constitutional right." *Id.* (citing *Freeman v.*  
 17 *City of Santa Ana*, 68 F.3d 1180, 1189 (9th Cir.1995)). Actions for malicious prosecutions are  
 18 not solely limited to prosecutors; such actions can be brought by "persons who have wrongfully  
 19 caused the charges to be filed." *Id.* (citing *Galbraith v. County of Santa Clara*, 307 F.3d 1119,  
 20 1126-27 (9th Cir.2002)).

21 Plaintiff has not alleged facts sufficient to show that any named defendant violated a  
 22 right, a privilege, or immunities secured by the constitution and federal laws when he was issued  
 23 a citation for an unoccupied vehicle on his property; nor has plaintiff alleged sufficient facts for  
 24 an alleged unidentified constitutional violation, based upon dismissal of the citation. Finally, he



1 has not alleged a constitutional violation for denial of discovery, given that the citation was  
2 dismissed. Plaintiff has not stated a claim for violation of his federal constitutional rights with  
3 regard to the 2010 citation. Defendants' motion to dismiss this claim for failure to state a claim  
4 should be granted.

5       2. *Public Records Requests.* Plaintiff alleges that his requests under Washington's Public  
6 Records Act, RCW 42.56 were improperly denied. RCW 42.56.550 provides for judicial review  
7 of denial of a public records request. Plaintiff has not stated a federal constitutional claim as to  
8 this issue. Defendants' motion to dismiss this claim for failure to state a claim should be granted.

9       3. *August 28, 2013 Proceedings in Raymond Municipal Court.* Plaintiff apparently  
10 claims his constitutional rights were violated when Judge Penoyer declined to listen to plaintiff  
11 and signed a bench warrant after plaintiff left the courtroom to obtain medication from his motel  
12 room, and when Mr. Turner and deputy Johnson refused to accept his mail in his attempt to  
13 resolve the warrant. Plaintiff has not stated a federal constitutional claim, on the facts alleged.

14       Further, Judge Penoyer is entitled to absolute immunity for allegedly declining to listen to  
15 plaintiff and for signing the bench warrant. Judges are absolutely immune from damages for judicial  
16 acts taken within the jurisdiction of their courts. *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9<sup>th</sup> Cir.  
17 1986); *Mullis v. United States Bankruptcy Court*, 828 F.2d 1385, 1390 (9th Cir. 1987). Even grave  
18 procedural errors or acts in excess of judicial authority do not deprive a judge of this immunity.  
19 *Stump v. Sparkman*, 435 U.S. 349, 355-57 (1973). As long as the judge's ultimate acts are judicial  
20 actions taken within the court's subject matter jurisdiction, immunity applies. *Ashelman v. Pope*, 793  
21 F.2d at 1078.

22       Defendants' motion to dismiss claims arising out of this incident should be dismissed for  
23 failure to state a claim.

1       4. *Judicial Conduct Complaint.* Plaintiff's judicial conduct complaint against Mr.  
2 Turner does not constitute a cognizable federal constitutional claim.

3       5. *Election.* Plaintiff alleges that Ms. Gilleland, Mr. Turner, Mr. Spoor and Ms. Johnson  
4 conspired to deprive plaintiff of "certain civil rights" in order to prevent him from being placed  
5 on the ballot for mayoral election, and that deputy Vance confiscated plaintiff's cell phone as he  
6 was campaigning for mayor of the City of Raymond. Plaintiff has not alleged facts supporting  
7 any federal constitutional claim. Defendants' motion to dismiss these claims should be  
8 dismissed for failure to state a claim.

9       6. *Conversation at Hospital.* Plaintiff alleges that officer Boggs and deputy Johnson  
10 listened to a telephone conversation between Dr. Shaw and VA physician Wallace in the  
11 emergency room of Willapa Hospital, and unlawfully passed the information on to police chief  
12 Spoor and Mr. Turner. Plaintiff has not alleged sufficient facts to show that these defendants  
13 violated any of plaintiff's federal constitutional rights. Defendants' motion to dismiss claims  
14 arising out of this incident should be dismissed for failure to state a claim.

#### 15       **B. Reasonable Accommodation**

16       Plaintiff alleges that defendants' failure to afford him reasonable accommodation  
17 pursuant to his requests on January 16, 2011 and November 28, 2012 violated the ADA.

18       The ADA prohibits a "public entity" from discriminating against a "qualified individual  
19 with a disability" on account of that disability. 42 U.S.C. § 12132. "Title II of the ADA provides  
20 that 'no qualified individual with a disability shall, by reason of such disability, be excluded  
21 from participation in or be denied the benefits of the services, programs, or activities of a public  
22 entity, or be subjected to discrimination by any such entity.'" *Simmons v. Navajo County, Ariz.*,  
23 609 F.3d 1011, 1021 (9th Cir. 2010)(citing 42 U.S.C. § 12132).

1 To state a claim under the ADA's Title II, Plaintiffs must allege:

2 (1) he is an individual with a disability; (2) he is otherwise qualified to participate  
 3 in or receive the benefit of some public entity's services, programs, or activities;  
 4 (3) he was either excluded from participation in or denied the benefits of the  
 5 public entity's services, programs, or activities, or was otherwise discriminated  
 6 against by the public entity; and (4) such exclusion, denial of benefits, or  
 7 discrimination was by reason of [his] disability.

8 *Id.*

9 To prevail under the ADA, plaintiff must show the accommodations offered by the  
 10 defendants were not reasonable, and that he was unable to participate equally in the proceedings  
 11 at issue. *Memmer v. Marin County Courts*, 169 F.3d 630, 633-34 (9th Cir. 1999).

12 Plaintiff has not alleged facts sufficient to show that he is a qualified individual with a  
 13 disability; what accommodations he requested; or, significantly, that he was excluded from  
 14 participating in the proceedings in the City of Raymond municipal court. In fact, plaintiff  
 15 alleged that he appeared in court, even though the courtroom was crowded and the proceedings  
 16 were delayed. Plaintiff left before he was apparently called to appear. Plaintiff has not stated a  
 17 claim that defendants violated the ADA. Defendants' motion to dismiss this claim for failure to  
 18 state a claim should be granted.

### 19 **C. State Law Claims**

20 It is unclear whether plaintiff is basing any of his claims on state law, although the  
 21 complaint alleges that the bench warrant issued on August 28, 2013 violated state law; and that  
 22 failure of defendants to comply with Washington's Public Records Act deprived plaintiff of  
 23 lawful information. Dkt. 26, at 5.

24 Under 28 U.S.C. § 1367, a federal court may assume supplemental jurisdiction over all  
 other claims that are so related to claims in the action the original jurisdiction so that they form  
 part of the same case or controversy. The Court may decline to exercise this supplemental

1 jurisdiction if (1) the claim raises a novel or complex issue of state law, (2) the claim  
2 substantially predominates over the claim or claims over which the district court has original  
3 jurisdiction, (3) the district court has dismissed all claims over which it has original jurisdiction,  
4 or (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.  
5 28 U.S.C. § 1367(c).

6 In this case, all claims over which the court has original jurisdiction are dismissed by this  
7 order. Any claims that plaintiff may make under state law involve interpretation of Washington  
8 law and should therefore be considered by the state court. The court should decline to exercise  
9 supplemental jurisdiction over any state law claims plaintiff is asserting in this case.

10  
11 Accordingly, it is hereby **ORDERED** that Defendants' FRCP 12(b)(6) Motion to  
12 Dismiss Plaintiff's Complaint (Dkt. 27) is **GRANTED** as follows: Plaintiff's federal claims are  
13 **DISMISSED**. The court **DECLINES** to exercise supplemental jurisdiction over plaintiff's state  
14 law claims; these claims are **REMANDED** to Grays Harbor County Superior Court.

15 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
16 to any party appearing *pro se* at said party's last known address.

17 Dated this 27<sup>th</sup> day of May, 2015.

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20 ROBERT J. BRYAN  
21 United States District Judge  
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